

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JEFF BRACELIN and FAITH BRACELIN,

Petitioners-Appellants,

v

ALLEGAN TOWNSHIP ZONING BOARD OF  
APPEALS,

Respondent-Appellee.

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UNPUBLISHED

August 17, 2006

No. 259758

Allegan Circuit Court

LC No. 04-036202-AV

Before: Zahra, P.J., and Neff and Owens, JJ.

PER CURIAM.

Petitioners appeal by leave granted the circuit court's order affirming the Allegan Township Zoning Board of Appeals' nullification of a special use permit that allowed petitioners to operate a motocross track in an agricultural-zoned district. We affirm.

**I Facts and Proceedings**

Over the course of five years, petitioners built a motocross track on their property, which was located in an agricultural-zoned district of Allegan Township. In early 2004, petitioners received a letter from Allegan Township notifying them that the township received a complaint about their track and that they needed a special use permit for the track. Petitioners applied with the Allegan Township Planning Commission and were granted a special use permit. A neighbor who opposed the track at the planning commission hearing appealed the grant to the zoning board of appeals.

At the board of appeals hearing, several people attended, and they spoke both for and against the track. Those speaking in favor of the track emphasized a limited availability of places to participate in motocross in the area. They also felt petitioners' track was family-oriented and stressed that there was no alcoholic drinking. Those speaking against the track emphasized the noise and dust caused by the track. The neighbor who filed the appeal also read from the Allegan Township's Public Nuisance ordinance. After discussion, the board voted to overturn and nullify the grant of the special use permit by the planning commission. Petitioners then appealed to the circuit court, which affirmed the zoning board of appeals' decision on the ground that the planning commission was without authority to approve a special use permit for a motocross track in an agricultural-zoned district. Such a use was not a designated special use in an agricultural district. The circuit court also found that petitioners failed to show a public need

for a track, as required by MCL 125.297a. Petitioners filed an application for leave to appeal with this Court, which was granted.<sup>1</sup>

## II Standard of Review

The decision of a planning commission or a zoning board of appeals is a final administrative decision subject to review by the circuit court pursuant to Const 1963, art 6, § 28. *Silver Creek Twp v Corso*, 246 Mich App 94, 98; 631 NW2d 346 (2001). The proper standard to be applied by the circuit court in review is whether the decision was authorized by law, and whether the findings were supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Barak v Oakland Drain Comm'r*, 246 Mich App 591, 602; 633 NW2d 489 (2001).

## III Analysis

This Court has stated that, “in plain English, [the phrase] authorized by law means allowed, permitted, or empowered by law.” *Northwestern Nat’l Gas Co v Comm’r of Ins*, 231 Mich App 483, 488; 586 NW2d 563 (1998), citing Black’s Law Dictionary (5th ed). An agency decision that is in violation of a statute or the constitution, is in excess of the statutory authority or jurisdiction of the agency, is made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious is a decision that is not authorized by law. *Id.*

The township enabling act provides:

A township may provide in a zoning ordinance for special land uses which shall be permitted in a zoning district only after review and approval by either the zoning board, an official charged with administering the ordinance, or the township board, as specified in the ordinance. The ordinance shall specify:

- (a) The special land uses and activities eligible for approval consideration and the body or official charged with reviewing special land uses and granting approval.
- (b) The requirements and standards upon which decision on requests for special land use approval shall be based.
- (c) The procedures and supporting material required for application, review, and approval. [MCL 125.286b(1).]

The act also provides in relevant part:

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<sup>1</sup> *Jeff Bracelin v Allegan Twp Zoning Board of Appeals*, unpublished order of the Court of Appeals, issued May 9, 2005 (Docket No. 259758).

If a township zoning ordinance authorized the consideration and approval of special land uses . . . the requirements and standards upon which the decisions are made shall be specified in the ordinance. [MCL 125.286d(1).]

Petitioners argue that the agency decisions were contrary to law because the township's zoning ordinance failed to adhere to the above-cited requirements of the enabling act. We disagree. The Allegan Township Zoning Ordinance expressly provides for special uses in an agricultural zone, including single-family dwellings, home occupations, roadside stands, office buildings and intensive livestock operations. Allegan Zoning Ordinance 300.162 § 5.02(d), (g), (j), (l), (m). The ordinance also specifies that the planning commission be charged with granting approval. *Id.* In addition, it specifies the criteria upon which decisions shall be based. Allegan Zoning Ordinance 300.502 § 12.62.

The circuit court concluded that the zoning ordinance gave the planning commission the authority to grant special use permits only “within various zone classifications designated as special uses,” and because a motocross track was not a designated special use within the agricultural zone, the planning commission did not have the authority to issue a permit. We agree. A special use permit is a “[p]ermitted exception to the zoning ordinance . . . . A special use permit allows a property owner to use his property in a way which the zoning regulation expressly permit under the conditions specified in the regulations themselves.” Black’s Law Dictionary (6<sup>th</sup> ed).<sup>2</sup> The ordinance does not expressly provide for a motocross track as a special use in an agricultural district. Therefore, the planning commission was without power to grant petitioners a special use permit for a motocross track. Accordingly, the circuit court properly affirmed the zoning board of appeals’ decision nullifying the special use permit because it was not authorized by law.

Petitioners argue, however, that because “there is absolutely no provision in the ordinance for any motocross track or any other type of track at all,” the Allegan Township zoning ordinance is contrary to MCL 125.297a and is therefore contrary to law. Again, we disagree.

MCL 125.297a provides:

A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a township in the presence of a demonstrated need for that land use within either the township or surrounding area within the state, unless there is no location within the township where the use may be appropriately located, or the use is unlawful.

To establish a violation of MCL 125.297a, petitioners must establish the following proofs in order to sustain a claim that the zoning ordinance is invalid: (1) there is a demonstrated need for

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<sup>2</sup> See also Black’s Law Dictionary (7th ed) (emphasis added) (a special use is “[a] zoning board’s authorization to use property in a way that is *identified as a special exception* in a zoning ordinance.”) (Emphasis Added).

the excluded land use in the township or surrounding area, (2) the use is appropriate for the location, and (3) the use is lawful. *Adams Outdoor Adv, Inc v City of Holland*, 234 Mich App 681, 694; 600 NW2d 339 (1999). Petitioners bear the burdens of production and persuasion, *id.* at 693, but have met neither burden here.

At the board of appeals hearing, a few people commented that there were very few places for them to participate in motocross, and they emphasized that petitioners' track was family-oriented. Such comments from a handful of people do not "demonstrate a need" for a motocross track in the township or surrounding area, but indicate a mere desire to have the track. Further, it was determined at the hearing that there were similar types of tracks in Martin and Newaygo. Therefore, petitioners did not meet their burden of production and persuasion to demonstrate a need for the track at their location, and the trial court's findings were not clearly erroneous.

We conclude that the circuit court correctly affirmed the nullification of the special use permit that the planning commission had no authority to issue. Given this conclusion, we need not address petitioners' issues related to irregularities with the Allegan Township Zoning board of appeals.

Affirmed.

/s/ Brian K. Zahra  
/s/ Janet T. Neff  
/s/ Donald S. Owens